

Debtors' Ex. 26

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

VAQUERÍA TRES MONJITAS, INC.
and SUIZA DAIRY, INC.

Plaintiffs,

v.

NEFTALI SOTO SANTIAGO, in his official capacity, as the Secretary of the Department of Agriculture for the Commonwealth of Puerto Rico, and JULIO CESAR MELENDEZ MORALES, in his official capacity, as Administrator of the Office of the Milk Industry Regulatory Administration for the Commonwealth of Puerto Rico.

Defendants

CIVIL CASE NO.: 04-1840 (DRD)

Consolidated with 08-2191 (DRD)
Consolidated with 08-2380 (DRD)

RE:

INJUNCTIVE AND DECLARATORY
RELIEF

*Received & filed
in Open Court
10/29/13 at 6:30 pm.*

FINAL SETTLEMENT AGREEMENT AND MEMORANDUM OF
UNDERSTANDING BETWEEN THE PARTIES

COME NOW the parties, very respectfully state and pray as follows:

1. The appearing parties, through their respective counsel, have reached a Settlement Agreement in the case of caption, which will be the basis of a final, absolute, binding and unappealable Judgment which will be effective upon entry. All parties are duly authorized to enter into this Agreement;
2. The parties have agreed to settle all matters pending in the instant action in the interest of justice without conceding any of Plaintiffs Suiza Dairy, Inc and Vaquería Tres Monjitas, Inc's claims as alleged in the complaint, or the validity of any of the judicial

orders, opinions or resolutions entered by the Honorable District and Circuit Courts. The parties agree to submit the present stipulation which will have the effect of dismissing the instant case with prejudice.

3. ORIL will conduct a comprehensive economic study of all the aspects relevant to the milk industry within the next twelve (12) months of the effective date of this agreement. Both Suiza Dairy, Inc ("Suiza Dairy") and Vaquería Tres Monjitas, Inc ("Vaquería Tres Monjitas") agree to guarantee an "open book" policy towards ORIL regarding the milk industry and to provide all the information requested by ORIL to conclude the aforementioned study. The parties have agreed that the Government of Puerto Rico will take all appropriate legal and regulatory measures to immediately implement a system pursuant to which any change to Regulation 12 (Exhibit 1) affecting in any way the margin or the regulatory accrual calculations of the plants, as they are presently reflected in Regulation 12 will require the unanimous vote of designated industry representatives from all industry sectors including without limitation, the farmers and plaintiffs themselves.

5. In consideration and recognition of the vital importance of the Milk Industry in Puerto Rico, upon the execution of this agreement, The Commonwealth of Puerto Rico will take the necessary steps to create a Special Fund to promote the efficiency of the Milk Market in Puerto Rico;

6. ORIL will enact and enforce Regulation 12 as drafted in Exhibit 1 with the terms and conditions of Exhibit 1 herein that will be binding for ORIL and for all market participants;

7. ORIL will immediately enact, to be effective November 7, 2013, the Milk Price Order enclosed herein as Exhibit 2. The milk price will not increase during the next four years, unless the present market conditions change substantially.

8. The Parties have settled and agreed that the total amount of principal of regulatory accrual due to Plaintiffs as of November 6, 2013 is \$170,639,638, of which \$123,389,024 belongs to Suiza Dairy and \$47,250,614 to Vaquería Tres Monjitas.

9. The above calculation of regulatory accrual results in a combined adjusted equity for the fresh milk processing plants of \$152,649,190, of which \$105,788,360 belongs to Suiza Dairy and \$46,860,830 to Vaquería Tres Monjitas. This adjusted equity is the equity mentioned in Regulation 12, Section 6.B.6.2.a. This is the equity to be multiplied by the percentage resulting from the Capital Asset Pricing Model (CAPM) as calculated in such Section of the Regulation. The result of this multiplication represents the allowed reasonable profit of the fresh milk processing plants to be added to the regulatory costs for purposes of setting the regulated price at which they will sell their fresh milk to their clients. For illustrative purposes only, Exhibits 3 and 4 present the determination of those numbers as of November 6, 2013.

10. The interest rate applicable for the payout of the regulatory accrual will be the Federal Court post-judgment interest rate (the "Legal Rate"). The calculation of the interest for a certain year is done using the balance of unpaid principal regulatory accrual as of December of the previous year times the arithmetic average legal rate for the current year.

11. Because the principal regulatory accrual of each plant is different, the payout period will expire for one plant before the other. After one of the plants has recovered the

totality of its regulatory accrual (the "Satisfied Plant"), the regulatory accrual charge will continue over all milk sold until payout is concluded for the remaining plant (the "Remaining Plant"). All monies collected as regulatory accrual by the Satisfied Plant will be collected on behalf of and will belong to the Remaining Plant. ORIL will guarantee that the Satisfied Plant will transfer these monies to the Remaining Plant forthwith.

12. The total payout of the regulatory accrual coming out of the price of milk is scheduled to end as of 2028. Every year, the annual amount of principal needed to cancel the entire principal by 2028, to be collected on a regulatory accrual charge, will be determined based on the unpaid principal, the Legal Rate and the amount of time remaining until 2028. The calculation of the initial regulatory accrual charge in addition to the current charge is presented in Exhibit 5 and the monitoring mechanism and methodology for the regulatory accrual is presented in Exhibit 6.

13. By the date of execution of this agreement, the plants have been collecting three cents of regulatory accrual charge and the monies collected have already been deducted from the regulatory accrual to obtain the unpaid principal mentioned in paragraph 8 above. When the New ORIL Price Order, Exhibit 2, enters into effect on November 7, 2013, 3 cents out of the regulatory accrual charge to pay out the principal as of 2028, will be deferred until January 1, 2017.

14. In order to protect Puerto Rican consumers, the Government of Puerto Rico by means of any of its instrumentalities, has agreed to contribute the following amounts to the regulatory accrual payout, which will be invested with preference in Puerto Rico:

- \$50 million during calendar year 2014 no later than December 31, 2014;

- \$15 million during calendar year 2015 no later than December 31, 2015;
- \$15 million during calendar year 2016 no later than December 31, 2016;
- \$15 million during calendar year 2017 no later than December 31, 2017;

The distribution of the above identified payments between the milk processors will be made pursuant to Exhibit 4, Table 1.S.6.2, using the "accumulated regulatory accruals net of collections" estimated as of November 6, 2013.

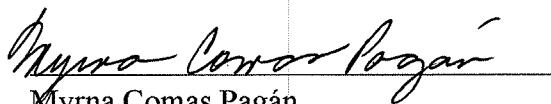
15. Upon the effective date of the New ORIL Price Order, Exhibit 2, the raw milk collection routes will be apportioned based on the corresponding market share of each fresh milk processing plant not including the school milk program. This apportionment will distribute equitably the routes of dairy farms closer to the metropolitan area as well as those farther away, such that no plant will have a competitive advantage over the other, such as favorable assignment of routes including all nearby dairy farms. The same will apply to the apportionment of the school luncheon program market.

16. Raw milk will be available to any purchaser at the same price for the same product and/or the same marketing purpose.

17. As of November 7, 2013 the raw milk transportation charge will be \$0.025 per quart. This charge may be adjusted in the future depending on changes in the transportation cost or the findings of the comprehensive economic study to be conducted under paragraph 3 of this agreement.

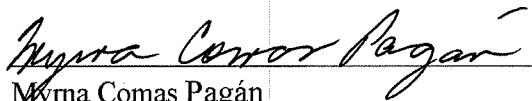
The terms and conditions of this settlement will be incorporated into the firm, final and unappealable judgment to be issued by the District Court. That Judgment will be equally binding to and enforceable against all signatories of this Agreement and the Government of Puerto Rico. All such parties hereby waive any defense they may have to the enforcement of this Agreement.

Agreed and Accepted by:



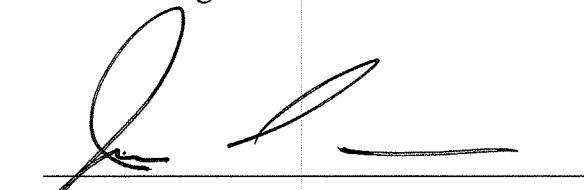
Myrna Comas Pagán

In her official capacity of Secretary of Agriculture of Puerto Rico
and on behalf of the Government of Puerto Rico



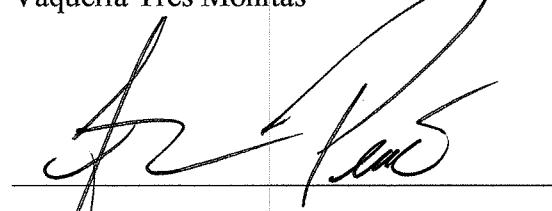
Myrna Comas Pagán

ORIL Acting Administrator



Juan Corrada del Río

Vaquería Tres Monitas



Francisco Pérez Corujo

Suiza Dairy

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 29th day of October, 2013.

LUIS SÁNCHEZ BETANCES

Secretary of Justice



Deputy Secretary of Justice in Charge of
Litigation


S/ Gerardo De Jesús Annoni

GERARDO DE JESÚS ANNONI

USDC-PR No. 212209

Department of Justice

P.O. Box 9020192

San Juan, PR 00902-0192

Office (787) 721-2900 x. 2111

Fax. (787) 722-4440

dejesusannoni@gmail.com


S/ Joseph G. Feldstein-Del Valle

JOSEPH G. FELDSTEIN-DEL VALLE

USDC-PR No. 230808

Federal Litigation Division

Department of Justice

P.O. Box 9020192

San Juan, PR 00902-0192

Office (787) 721-2900 x. 2651, 2606

Fax. (787) 723-9188

jfeldstein@justicia.pr.gov


S/Edward Hill Tollinche

ehill@hillgonzalez.com

558 Cesar Gonzalez Ave.

San Juan, PR 00918

Tel. (787) 294-0033

Fax.(787) 294-8804

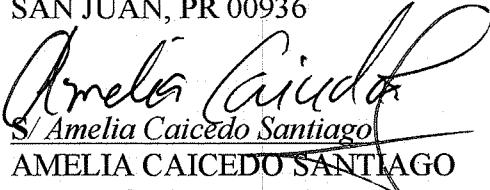

S/ Rafael Escalera

escalera@reichardescalera.com

REICHARD & ESCALERA

PO BOX 364148

SAN JUAN, PR 00936


S/ Amelia Caicedo Santiago

AMELIA CAICEDO SANTIAGO

Caicedo@reichardescalera.com

REICHARD & ESCALERA

PO BOX 364148

SAN JUAN, PR 00936

by: 

S/ Jose R Lazaro Paoli

JOSE R. LAZARO PAOLI

jlp@lazaropaoli.com

LAW OFFICES OF JOSE R. LAZARO PAOLI

PO BOX 19225

SAN JUAN, PR 00910

